

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RICHARD EARL GEORGE,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Civil No. 13-0555 AJB (NLS)

**SUMMARY DISMISSAL OF  
SUCCESSIVE PETITION PURSUANT  
TO 28 U.S.C. § 2244(b)(3)(A)  
GATEKEEPER PROVISION**

Petitioner, Richard Earl George, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis. The Court does not rule on Petitioner's request to proceed in forma pauperis because this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

**PETITION BARRED BY GATEKEEPER PROVISION**

The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his November 22, 2005 conviction in San Diego Superior Court case No. SCD 17983. On November 19, 2007, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in case No. 07cv2215 J (POR). In that petition, Petitioner challenged his conviction in San Diego Superior Court case No. SCD 17983 as well. On September 24, 2009, this Court denied the petition on the merits. (*See* Order filed Sept. 24, 2009 in case No. 07cv2215 J (POR) [ECF No. 28].) Petitioner appealed that determination. On May 5, 2011,

1 the Ninth Circuit Court of Appeals affirmed this Court's decision. (*See Order in George v.*  
2 *Almager*, 09-56835 (9th Cir. May 5, 2011).)

3 On March 29, 2012, Petitioner filed another petition for writ of habeas corpus in case No.  
4 12cv00790 LAB (WMc), in which he again challenged his conviction in San Diego Superior  
5 Court case No. SCD17983. On April 4, 2012, this Court summarily dismissed the petition as  
6 successive, pursuant to 28 U.S.C. §2244(b)(3)(A). (*See Order filed April 4, 2012 in case No.*  
7 *12cv0790 LAB (WMc) [ECF No. 3].*) On August 8, 2012, the Ninth Circuit Court of Appeals  
8 denied Petitioner's application for authorization to file a second or successive petition. (*See*  
9 *Order in George v. Vazquez*, 12-71663 (9th Cir. Aug. 8, 2012).) The appellate court denied  
10 another such application from Petitioner on February 27, 2012. (*See Order in George v. Biter*,  
11 *12-73793 (9th Cir. Feb. 27, 2013).*)

12 Petitioner is now seeking to challenge the same conviction he challenged in his prior  
13 federal habeas petitions. Unless a petitioner shows he or she has obtained an Order from the  
14 appropriate court of appeals authorizing the district court to consider a successive petition, the  
15 petition may not be filed in the district court. *See* 28 U.S.C. § 2244(b)(3)(A). Here, there is no  
16 indication the Ninth Circuit Court of Appeals has granted Petitioner leave to file a successive  
17 petition.

### 18 CONCLUSION

19 Because there is no indication Petitioner has obtained permission from the Ninth Circuit  
20 Court of Appeals to file a successive petition, this Court cannot consider his Petition.  
21 Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition  
22 in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals.<sup>1</sup>

23 **IT IS SO ORDERED.**

24 **DATED: March 13, 2013**

25   
26 **Hon. Anthony J. Battaglia**  
27 **U.S. District Judge**

28 <sup>1</sup> Attached for Petitioner's convenience is a blank Ninth Circuit Application for Leave to File  
Second or Successive Petition.